

REMARKS

Claims 14, 71, and 72 are amended, no claims are canceled, and no claims are added; as a result, claims 1-35 and 44-76 are now pending in this application.

Claim 14 was amended to correct a minor error therein. Namely, the phrase "first" was added to merely clarify the claim. This amendment is not made in response to any substantive amendment under the Patent Act.

Claim 71 was amended to correct a minor error therein. Namely, the phrase "selected" was added to merely clarify the claim. This amendment is not made in response to any substantive amendment under the Patent Act.

Claim 72 is amended to correct a typographical error. Namely, replacing a period with a comma. This amendment is not made in response to any substantive rejection under the Patent Act and is not narrowing.

The Office Action Summary at checkbox 4 states, "Claim(s) 1-76 is/are pending in the application." Applicant respectfully submits that claims 36-43 were canceled in a Preliminary Amendment to the above-identified patent application (Serial No. 10/731,276), the Preliminary Amendment being mailed March 23, 2004. Therefore, claims 36-43 are no longer pending in the application.

The Office Action Summary at checkbox 7 states, "Claim(s) 2-8,10-13,15,17-22, 24-30,33-43,45-52, 54-57, 59-63, 65-70, and 72-76 is/are objected to." However, the Office Action fails to state a grounds upon which the objection is based. Therefore, applicant respectfully request that the next Office Action state that claims 2-8,10-13,15,17-22, 24-30,33-43,45-52, 54-57, 59-63, 65-70, and 72-76 are allowed.

Information Disclosure Statement

Applicant notes that an incompletely-initialed copy of the 1449 form was returned with the Office Action. Specifically, the examiner failed to initial the final document (DE-19821641) listed on sheet 1 of the 1449 form. A copy of the returned 1449 form is enclosed. Applicant respectfully requests that the examiner complete the consideration of the Information Disclosure Statement filed with the present application and return a completely-initialed copy of the 1449 form.

Double Patenting Rejection

Claims 1, 9, 14, 16, 23, 31, 32, 44, 53, 58, 64, and 71 were rejected under the judicially created doctrine of double patenting over claims 1-36 of U.S. Patent No. 6,694,416. The Applicant respectfully traverses this rejection, since a *prima facie* case of nonstatutory-type double patenting has not been established, as required by the Federal Circuit Court of Appeals.

The Federal Circuit in *Kaplan* held that obviousness-type double patenting rejections must include clear evidence to establish why an alleged variation of an invention claimed in a prior patent would have been obvious. See *In re Kaplan*, 229 USPQ 678 (Fed. Cir. 1986). Hence, to establish a *prima facie* case of nonstatutory-type double patenting: 1) the inventions claimed in the application and the patent must be identified, and 2) it must be established that any variation in the inventions claimed and patented would have been obvious to a person of ordinary skill in the art. In addition, the Federal Circuit has held that: 3) the showing of obviousness must follow the analysis used to establish a *prima facie* case of obviousness. See *In re Longi*, 225 USPQ 645, 651 (Fed. Cir. 1985) and M.P.E.P. § 804. In the case of the instant Office Action, the only statements made in support of the rejection are, "Although the conflicting claims are not identical, they are not patentably distinct from each other, because the present application is obvious in view of the U.S. Patent No. 6,694,416 B1. The patent claims the same elements and their functions plus additional elements and their functions not being claimed in the present application. The omission of some elements and their functions from the patent claims would have been obvious if the functions or the elements are not desired (see MPEP 2144.04(II)A)." The applicant respectfully disagrees with these statements. Further, applicant respectfully submits that: the inventions have not been identified, a *prima facie* case of obviousness has not been established, and no showing of obviousness has been made.

Therefore, applicant request withdrawal of the double patenting rejection and reconsideration and allowance of claims 1, 9, 14, 16, 23, 31, 32, 44, 53, 58, 64, and 71.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 349-9587 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

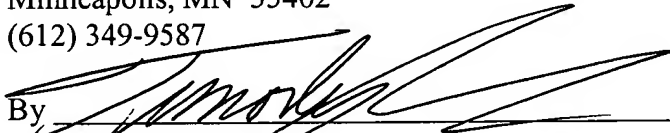
Respectfully submitted,

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By their Representatives,

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Date 14 Dec '04

By 
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: MS Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 15 day of December, 2004.

Tina Kohut
Name

ZUA
Signature